



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 7, 1996

Ms. Julie Pachares
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR96-1400

Dear Ms. Pachares:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 20295.

The City of Midland (the "city") received a request for the following categories of information:

1. Information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by the MPD or the CoM relating to funds paid to [a paid informant] for the purpose of making purchases or sales of narcotics or as compensation for offering testimony or for acting at the direction of Sgt. Bogart in the making of purchases or sales of narcotics as part of police investigations of narcotics offenses. This request is limited to indicted offenses which are no longer confidential because of dismissal or for other reasons.
2. All MPD policies, rules, regulations, or guidelines currently in use and/or in use on April 17, 1992, relating to funds paid to informants during the investigation or prosecution of drug related crimes . . . [including] funds provided for such purposes by the City of Midland or by any other governmental entity if vouchers or payment requests were made by employees of the Midland Police Department.

3. The accounting records of the MPD or CoM which relate to the use of funds to pay informants and to provide funds for purchases of drugs by paid informants
4. Reports, audits, evaluations, and investigations made of, for, or by the CoM or MPD relating to such funds for payment of informants or for the purchase of illegal drugs.
5. Rules of procedure, descriptions of forms available or the places at which form [sic] may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations relating to such funds for payment of informants or for purchase of illegal drugs in transactions relating to investigation of illegal drug transactions.
6. Administrative staff manuals and interpretations which have been adopted by the CoM or the MPD that relate to promotion of officers of the MPD or that relate to the funding of money for the payment of informants for the purchase of illegal drugs.
7. Records relating to the MPD Promotion Board considerations of the promotion of Sgt. Brian Bogart since April 17, 1992.

You advise us that you do not object to releasing the information responsive to requests 2, 5, 6, 7, and some of the information responsive to request 4. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. You have submitted samples of the requested documents.¹ We have considered the exceptions you claimed and have reviewed the documents at issue.

You assert that parts of the request are overly broad. We note that a governmental body has an obligation to make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990) at 8. When a governmental body is presented with an unclear request for information, the governmental body should advise the requestor of the types of information available so that he may clarify his request. *Id.* at 9. Similarly, when a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow his request. *Id.*; *see also* Attorney General Opinion JM-672 (1987); Open Records Decision No. 563 (1990). Therefore, the city should ask the requestor for clarification, advising the requestor as to the types of information available.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; see *Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.² *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We conclude that the information responsive to requests 1 and 3 may be withheld under section 552.108 of the Government Code.

Section 552.111 excepts “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency’s policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

We have reviewed the information that is highlighted in Attachment “C,” and conclude that most of it contains advice, opinion, and recommendations relating to the policymaking processes of the police department. However, some of the information is purely factual and may not be withheld under section 552.111. We have marked the information that may not be withheld under section 552.111.

You claim that the information responsive to request 7 is excepted from disclosure under sections 552.111 and 552.101.³ The records in Attachment “D” relate to personnel matters and, accordingly, are not protected from disclosure under section 552.111. Section 552.101 excepts from disclosure “information considered to be

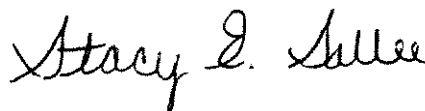
²The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

³You claim that the Midland Police Department does not have a promotion board but does have an “assessment center” that evaluates police officers. We believe that these assessments are responsive to the request. However, we refer you to our discussion above of what the city’s obligations are with respect to unclear or overbroad requests.

confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses both common-law and constitutional privacy. We have reviewed the submitted information and find nothing in the documents that is protected by either common-law or constitutional privacy. Therefore, the city may not withhold the documents submitted as Attachment "D."

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Stacy E. Sallee".

Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 20295

Enclosures: Marked documents

cc: Mr. George E. Patton
P.O. Box 5092
Midland, Texas 79704
(w/o enclosures)